

SERVICES AGREEMENT

and

Terms & Conditions



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Version 4.02 Dated 1/1/2009 WORK ORDERS / SERVICES AGREEMENT

Party details:	The Company	Customer
	Name ShoppingTrader.com Australia Pty Ltd	Coy Name: _____
	ABN 80 837 982 510	ABN: _____
	Address PO BOX 127, PETRIE QLD 4502	Director: _____
	Tel 1300 620 550	Full name DOB: _____ Drivers Lic: _____
	Fax 07 3491 9913	Address _____
	Email sales@DotMinded.net	Tele: _____
	Fax: _____	Email: _____

Execution Date: Dated this _____ day of _____, 20____

Initial Term Services: 12 months, following which either party can terminate on 90 days' notice (clause 3.1).
The Company services as specified in Annexure B, as agreed in Work Orders from time to time together with any additional services agreed from time to time.

Pricing: Standard webhosting pricing is set out in Annexure A. Specific pricing will be specified in each Work Order. Our Rate Card is published at <http://www.webexpress.net.au/ratecard>

Terms and Conditions: The Terms and Conditions attached to this Work Order / Services Agreement and published at http://www.shoppingtrader.com/webhosting_tac.pdf apply to the provision by the Company and the purchase by the Customer named above of the Services described above.

The Customer acknowledges that the services are provided by the Company to the Customer and are not transferable to any 3rd party, nor can the Customer resell the services provided by the Company without the Company's expressed prior written approval.

Services Requested by Customer:

Hosting Plan: _____ **Price:** _____

Paid: Monthly / Yearly (cross out which is not applicable)

Once Off Hosting SetUp Fee: _____ **DNS Setup Fee:** _____ **DNS Ongoing Fees:** _____

Web Design Fee: _____/hr (charged in 10 minute intervals)

Other Services:

Dated this _____ day of _____, 20

[Don't Forget to initial bottom of all pages of Terms and Conditions please]

Customer Acknowledgement:

By signing this Agreement, I / We acknowledge that:

- I / We understand all pricing shown above in the RateCard (<http://www.webexpress.net.au/ratecard>) is GST exclusive
- I / We agree to standard Terms & Conditions detailed on http://www.shoppingtrader.com/webhosting_tac.pdf
- If signing on behalf of a Company, I / We are fully authorised to sign on behalf of the Company.
- I / We agree to the minimum fixed agreement term of 12 months with 3 months notice to cancel.
- Where the Customer is an incorporated non listed company, the Directors agree to act as Guarantors.

Name:

Name:

Print Name:

Print Name:

Title:

Title:

Signed: X

Signed: X

[Company Head Office Use ONLY - The Customer will receive a duly signed faxed copy of this Services Agreement with attached Tax Invoice within two (2) business days. The acceptance of the Terms and Conditions of this Agreement is not subject to the Customer receiving a duly signed copy of this Services Agreement]

Signed on behalf of the **Company** by its duly authorised officer

SIGNED on behalf of **the Company** by its duly authorised Company Officer:

Name:

Title:

Signed:

Initials	

TERMS AND CONDITIONS Web Hosting, DNS and/or Web Design

(Standard Service Agreement. V1.12. Effective from 1st January 2008)

These Terms and Conditions are available online at http://www.shoppingtrader.com/webhosting_tac.pdf

Revised conditions are effective 30 days from the date of publishing online at http://www.shoppingtrader.com/webhosting_tac.pdf

You also must read, agree with and accept all of the terms and conditions contained in this User Agreement and the Privacy Policy at http://www.shoppingtrader.com/privacy_policy.php, which include those terms and conditions expressly set out below and those incorporated by reference, before you may become a member of Shopping Trader. We strongly recommend that, as you read this User Agreement, you also access and read the information contained in the other pages and web sites referred to in this document, as they may contain further terms and conditions that apply to you as a Shopping Trader user. Please note underlined words and phrases are links to these pages and web sites. By accepting this User Agreement, you also agree that your use of other Shopping Trader web sites will be governed by the User Agreement and Privacy Policy posted on those web sites.

We may amend this Agreement at any time by posting the amended terms on the Site. Except as stated below, all amended terms shall automatically be effective 14 days after they are initially posted on the Site. In addition, we will notify you in accordance with your Notification Preferences. This Agreement is effective upon acceptance in registration for new registering users of the website www.ShoppingTrader.com Using our other services (Dotpapers or Hosting/Design services (via we.net.au and or via webexpress.net.au)) you agree that it is deemed that you fully agree to be bound by our Terms and Conditions for those products.

The parties agree as follows:

1 DEFINITIONS

Words and expressions in this Agreement that are capitalised have the meanings set out in the Dictionary attached to and forming part of this Agreement.

SUPPLY

1.1 Supply

(a) The Customer agrees to purchase the Services from the Company which in turn agrees to provide the Services to the Customer in accordance with this Agreement. Any instructions received by The Company from the Customer for the supply of Services and/or the Customer's acceptance of Services supplied by The Company and/or usage of the Company's services by The Customer shall constitute acceptance of the terms and conditions contained herein.

1.2 Additional Services

Additional Services may be agreed by the parties in writing and if so agreed, those Additional Services will become subject to the provisions of this Agreement.

1.3 Subcontracting

The Company may subcontract the whole or any part of the provision of the Services but remains responsible to the Customer for the performance of the Services. No subcontractor or Company's Personnel has the authority to (a) pledge the Company to any new Agreement(s) and or (b) amend any current Agreement(s) and or (c) make any new Agreement(s) to bind the Company; in writing and / or verbally without the written permission of the Company's Officers(s).

1.4 Use of Supply by Customer

It is agreed that the Supply of Service by the Company is for the sole use of the Customer only and not to be resold by the Customer, and nor to be used by another other party including the Customer's subsidiaries or franchisees or licensees of the Customer or customers of the Customer. Failure to comply may result in termination without notice by the Company of the Services by the Company without recourse of any refund whatsoever and any further Services unpaid by term of this Contract by the Customer will still remain as debt to the Company and payable immediately regardless of the termination.

2 PRICING AND PAYMENTS

2.1 Plan Fee and / or Service Fees

The Company will invoice the Customer at the Invoice Frequency for the Service Fees applicable to the Services provided in the immediately preceding service period. The Customer must pay to the Company the amount due under each correctly rendered invoice within the Payment Period from receipt of the invoice.

2.2 Disputed Invoices

In the event of any bona fide dispute with regard to an invoice or any portion of an invoice, the undisputed portion must be paid by the Customer to the Company pending settlement of the dispute. The dispute will be dealt with under clause 17. To dispute an invoice use our online billing system at <http://billing.shoppingtrader.com>

2.3 Price Review

The Company may conduct six monthly price reviews of the Service Fees. Following such review, the Company shall issue a revised Annexure A to specify the revised standard Service Fees. Any such revision of Service Fees will not affect any then current Contract.

2.4 GST

(a) Save for defined terms in this Agreement, capitalised expressions set out in this clause have the same meanings as those expressions in the GST Law.

(b) Unless otherwise expressly indicated, all amounts relating to a Taxable Supply quoted by the Company or stated in this Agreement represent the Value of the Taxable Supply and do not include the GST Amount.

(c) Where a Taxable Supply is made by the Company to the Customer, the Customer will pay to the Company the GST Amount applicable to that Taxable Supply in addition to any other amount payable under this Agreement in respect of that Taxable Supply (including but not limited to the Service Fee). Unless otherwise specified in writing by the Company, the Customer will pay the GST Amount concurrently with the payment of the earliest of any other amount payable in respect of the Taxable Supply.

(d) The Company will provide the Customer with a Tax Invoice in a form which complies with the GST Law before any GST Amount is payable.

(e) Any reference in this Agreement to a cost or expense which is to be reimbursed by the Customer to the Company excludes any amount in respect of GST forming part of the cost or expense when incurred by the Company for which the Company can claim an Input Tax Credit PROVIDED THAT nothing in this clause will prevent the Company from charging the GST Amount to the Customer in respect of a Taxable Supply for which the cost or expense is Consideration.

2.5 Failure to Pay

If any amount of money payable by the Customer to the Company under this Agreement is overdue and remains unpaid at the end of a period of seven (7) days following the giving of a written demand for payment by the Company to the Customer, then the Company will be entitled to:

(a) charge to the Customer interest at the Default Interest Rate in respect of such amount calculated from the due date for payment until the date on which an honoured payment is received by the Company; charge to the Customer all reasonable costs of the Company incurred in relation to any action taken by or on behalf of the Company for the recovery of such amount from the Customer; and

(b) suspend the provision of the Services until payment of such amount is received by the Company in full, without liability whatsoever to the Customer for any loss, damage, cost or expense resulting from such suspension. Any amount charged by the Company to the Customer under this clause will be payable within the Payment Period from the Customer's receipt of an invoice including such charge.

2.6 Credit Reporting
 The Company is authorised to make all enquiries it deems necessary to investigate the Customer's financial status including but not limited to inquiry with credit providers and any credit reporting agency (collectively "the sources"). The sources are authorised to disclose to the Company information concerning the Customer and its directors which is within their possession. The Company is authorised to disclose any information concerning the Customer and its directors to the sources.

3 TERM OF AGREEMENT

3.1 Term

(a) Agreement will commence on the Execution Date and will continue for one (1) year, following which it may be terminated by either of the parties by giving not less than ninety (90) days prior notice in writing to the other party before the expiry date of Agreement.

(b) The termination of the Agreement under this clause 4 does not affect any current Work Order.

(c) Failure to pay any fees when due may result in termination without notice by the Company of the Services by the Company without recourse of any refund whatsoever and any further Services unpaid by term of this Agreement by the Customer will still remain as debt to the Company and payable immediately as a liquidate sum regardless of the termination.

(d) At the end of the term, in the absence of a Cancellation Notice received 90+ days before expiry of the Agreement, the Agreement will automatically renewed for another 12 month term. Upon rollover, the current Terms & Conditions as published is part of the new Agreement.

4 STANDARDS

4.1 Service Level Standards
 In providing the Services, the Company will comply with any applicable Service Level Standards set out in Annexure B.

4.2 Security

(a) The Company will use all reasonable endeavours to maintain security over all Data belonging to the Customer, whether in hard copy form or in electronic media.

(b) All waste material will be disposed of in a secure method.

(c) If the Data is lost, destroyed, or altered without fault of the Customer, the Company will use all reasonable commercial efforts to promptly restore the Data.

4.3 Storage and retrieval

(a) The Company retains the right to purge the Data which is no longer current after providing the Customer with a copy of such Data.

(b) The Company will make reasonable efforts applying modern virus detection software to detect viruses in document attachments and other materials and to prevent infected documents and other materials from being delivered to the Customer. However, the Company does not warrant that all materials will be free from viruses and the Customer releases the Company from liability for any damage caused by infected materials.

4.4 Facilities
 The Company undertakes to provide and maintain adequate facilities to process the Customer's requirements at the Company's sites.

4.5 Continuous Improvement
 The Company will keep itself apprised of industry best practice for the Services and will use reasonable efforts to implement continuous improvement strategies.

5 RELIABILITY AND ACCESS

(a) As the Internet is an inherently unstable medium, the Company cannot guarantee that the Services will be accessible or available at all times. The Company will however, subject to the other terms of this Agreement, use all reasonable endeavours to ensure that the Services are accessible and available to the Customer, and will comply with any applicable Service Level Standards, as required under clause 5.1.

(b) The Customer is solely responsible for providing, installing, maintaining and supporting all of the equipment, facilities, hardware, software, systems, network connections (including without limitation Internet connections) and anything else

necessary to enable the Customer to connect to the Internet and to use and access the Services.

(c) The Company may, by giving the Customer reasonable notice, deactivate or disconnect all or part of the Services to carry out system maintenance, upgrading, testing or repairs.

6 PERFORMANCE OF THE SERVICES

6.1 Data Transfer
 The Customer will deliver to the Company all materials and Data reasonably required for the provision of the Services in the format as per the Company requires and at the times (if any) specified in Annexure B and any applicable Work Order.

6.2 The Company's Errors
 The Company will determine the cause of and correct any errors which are due to the malfunction of the Company controlled equipment, acts of the Company's Personnel or any other errors or problems not caused directly or indirectly by the Customer, its employees or its agents.

6.3 Customer's Errors
 The Company will not be responsible for delays in the performance of the Services or the need for additional services required as a result of inaccurate, incomplete or incorrectly formatted materials, PDFs, graphic files, media files or Data submitted by the Customer, its employees, or its agents, or any errors within the reasonable control of the Customer, its employees, or its agents. The Customer will pay at the rate of \$80 per hour + GST to the Company any additional costs incurred by the Company in converting or processing materials or Data provided to the Company by or on behalf of the Customer which is not in compliance with this clause.

6.4 Customer's warranties
 The Customer warrants that:

(a) the Data is accurate and up-to-date and any Data or materials provided by or on behalf of the Customer in order for the Company to perform the Services do not incorporate any misleading or deceptive, defamatory, offensive or illegal information;

(b) the Data is authorised for reproduction online and will not breach the IP of anyone;

(c) where the Data includes Personal Information:

(i) the Data has been collected in compliance with the Privacy Laws and, in particular, has been collected by lawful and fair means and not in an unreasonably intrusive way;

ii. at or before the time of collection, reasonable steps were taken to ensure that the individuals whose Personal Information was collected were made aware of the purpose for which it was being collected and that the individuals have a right of access to their Personal Information; and

iii. use of the Data for the Services will not breach the Privacy Laws; and,

(d) any materials provided by Customer to the Company are free from viruses.

The Customer indemnifies the Company and the Company's Personnel from and against all claims, liabilities, demands, fines, costs or expenses to third parties or responsible authorities resulting from the handling or use of the Data or materials in the course of providing the Services in accordance with this Agreement or resulting from a breach of the Customer's warranties contained in this clause.

(e) Resupply
 The Company's liability in the case of errors or defects in the Services is limited, at the Company's option, to:

(f) the supplying of the Services again; or

(g) the payment to the Customer of the cost of having the Services provided again.

7 USE OF CUSTOMER DATA

- (a) This clause 7 (**Use of Customer Data**) is subject to clause 8 (**Marketing**).
- (b) In providing the Services, the Company will be required to host and store Customer Data. The Company warrants that the Company will not contravene any law relating to privacy or data protection in hosting or storing the Data, and indemnifies Customer against any contravention by the Company of any law relating to privacy or data protection in hosting or storing the data, subject to Customer obtaining all necessary consents and authority of any person as may be required pursuant to any law to enable the Company to store and host the Data in the manner contemplated in this Agreement and any applicable Work Order.
- (c) The Company will not use the Data for any purpose other than providing the Services or any disclosure required to comply with any law or direction by a Court or regulatory authority.
- (d) No part of the Data will be disclosed, sold, assigned, licensed or otherwise disposed of by the Company to any third party.

8 MARKETING

Despite clause 7 (**Use of Customer Data**) but subject to clause 11 (**Confidential Information**), Customer consents and agrees to the Company doing any of the following for the purpose of promoting the Services to third parties:

- (a) name Customer as a customer of the Company and user of the Services; and / or
- (b) publish a graphics snap shoot the Customer's website on the Company's Web Portals; and / or
- (c) use the Data in a broad, aggregated and de-identified manner such that it does not reveal the identity of Customer, or individual users of the Service, provided that such action is not in contravention of any law or regulation.

9 MANAGEMENT

9.1 Authorised Representatives

In respect of each Work Order, each of the Company and the Customer shall appoint a Contact Person to act as a contact point for communications and meetings between the parties and to monitor and discuss the progress of the Services and other operational and administrative aspects concerning the performance of this Agreement on behalf of the party whom they represent.

9.2 Replacement

Each party will ensure that it has an adequate procedure to ensure the quick and sufficient transfer of knowledge concerning the Services and this Agreement to any of its personnel who the party may nominate to replace its Contact Person.

9.3 Meetings

The Contact Persons will make themselves available to meet monthly or at such other frequency as they may agree.

9.4 Reporting

The Company shall provide to the Customer periodic reporting concerning the Services provided in prior periods.

9.5 Records

The Company will maintain true and accurate records of the Services provided pursuant to this Agreement including computer printouts, electronic data and invoices.

10 TERMINATION

10.1 Termination Events

Subject to Clauses 3 & 17 of this agreement, either party may terminate this Agreement by giving written notice to the other party if that other party:

- (i) commits a material breach of this Agreement which is not remedied within thirty (30) days after that party receives a written notice from the first-mentioned party specifying the breach and requiring it to be remedied; or
- (ii) becomes subject to an Insolvency Event.

10.2 Consequence of Termination

Upon termination of this Agreement:

- (a) The Company is entitled to any amounts payable to the Company under this Agreement in respect of the period up to and including the date of termination or for which Services have been provided to the Customer in accordance with this Agreement; and
- (b) at the request of the Customer, the Company will use its reasonable endeavours for a period of up to ninety (90) days to assist the Customer to transfer the Services in such a manner as to minimise business interruptions to the Customer, provided that the Customer has made all outstanding payments to the Company and pays to the Company, the Company's reasonable transfer assistance charges.
- (c) The Company will immediately return all relevant Data, information, software, documents and all other relevant materials owned or provided by the Customer.
- (d) Notwithstanding any other provision of this Agreement, the Company will be entitled to retain its internal records, accounts, reports, correspondence and other documentation and, for the avoidance of doubt, all feature-rich and searchable promotions and catalogue material produced, recording its performance under this Agreement and in doing so will take all reasonable steps to safeguard any Confidential Information contained in them.
- (e) The termination of this Agreement for any cause will be without prejudice to any accrued rights of the parties under this document arising prior to such termination or expressed to take effect or continue in effect following such termination.
- (i) The Customers agrees that there are no refunds to any moneys paid.

10.3 Termination of Services

- (a) Subject to clauses 3 & 17 of this Agreement, the Customer may terminate the Company web portal(s) Service by providing ninety (90) days' written notice of termination to the Company.
- (b) Subject to clauses 3 & 17 of this Agreement, the Customer may terminate Web Design services on thirty (30) days' written notice.

11 CONFIDENTIAL INFORMATION

11.1 Permitted Disclosure

Each party will keep and ensure that its officers, employees and agents keep confidential all Confidential Information and take all such steps and do all such things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information and will not disclose Confidential Information to any person, except:

- (a) as required by law;
- (b) with the prior written consent of the other party;
- (c) to the other party's agents, employees, advisers and contractors in the proper performance of that party's responsibilities and duties under this Agreement, or as reasonably required to a professional legal adviser.

11.2 Return

Upon request by the party disclosing the Confidential Information, the party receiving the Confidential Information must forthwith return, destroy or have destroyed as directed all Confidential Information of the other party in its possession or control.

11.3 Survive Termination

This obligation of confidentiality will survive termination of this Agreement and will continue in force until such time as the Confidential Information becomes public knowledge other than by breach of this Agreement.

12 INTELLECTUAL PROPERTY

12.1 No Transfer

Except as expressly provided, nothing in this Agreement conveys to either party any right, title, interest in the other party's property including without limitation all Intellectual Property created by or arising out of performance of this Agreement.

12.2 No Licence

Except as expressly provided in a Work Order, all rights in Intellectual Property owned by the Company at the Execution Date, or developed by the Company in providing the Services under this Agreement remain at all times the sole and exclusive property of the Company and no licence of these rights is granted to the Customer except as expressly provided in this Agreement or agreed in writing by the Company.

12.3 The Company's warranty

The Company warrants that it has the right to use all and any computer programs, equipment and materials used by it in connection with providing the Services and that such use will not infringe the Intellectual Property rights of any third parties.

The Company will not accept responsibility and or damages for internet outages outside the control the Company.

12.4 Customer's Data

The Company acknowledges that any Data / Information provided by or through the Customer pursuant to this Agreement is and remains the sole property of the Customer.

12.5 End User data

The parties acknowledge that data and any other information provided by an end user:

- (a) accessing the Company web portal(s) service is the confidential information of the Company; and
- (b) accessing the Web Design service is the confidential information of the Customer.

12.6 Exclusive Developments

Intellectual Property in all items, materials, and works (including software developments and enhancements or modifications to applications), and for the avoidance of doubt, all feature-rich and searchable promotions and catalogue material, developed or produced by the Company in order to carry out the Services will be the sole and exclusive property of the Company.

12.7 Customer's Warranty

The Customer warrants that it has the right to use and the right to permit the Company to use all and any items, materials, Data or documents provided by or on behalf of the Customer to the Company for the purposes of this Agreement.

13 FORCE MAJEURE

13.1 Force Majeure

- (a) Neither party will be liable to the other party for any delay or failure to perform its obligations pursuant to this Agreement (except an obligation to pay money) if such delay or failure is due to Force Majeure.
- (b) If a delay or failure to perform a party's obligations is caused by Force Majeure (such party being the "Affected Party"), the performance of the Affected Party's obligations except an obligation to pay money will be suspended.
- (c) The Company will notify the Customer as soon as practicable of any anticipated delay due to Force Majeure.
- (d) If a delay or failure to perform an Affected Party's obligations due to Force Majeure exceeds thirty (30) days, the other party may immediately terminate this Agreement on providing notice to the Affected Party.

14 LIABILITY

14.1 Liability Cap

Notwithstanding any other provision of this Agreement, the liability of the Company to the Customer for damages or any other claim arising out of or in connection with the Services or otherwise under this Agreement, whether or not such liability results from or involves negligence on the part of the Company or the Company's Personnel, is limited for each event and in the aggregate to the greater of \$100 under this Agreement as at the time of a claim made under this Agreement.

14.2 Consequential Loss

In no event will the Company be liable to the Customer for any loss of profits, loss of revenue or for any indirect or consequential losses incurred by the Customer or any third party arising from the Company's performance of this Agreement or otherwise arising under this Agreement.

15 DISPUTE RESOLUTION

15.1 Procedure

If a dispute or disagreement arises in relation to this Agreement ("Dispute") a party must not start court proceedings (except proceedings seeking urgent interlocutory relief) unless it has complied with this clause.

- (a) A party may give written notice to the other that a Dispute exists ("a Dispute Notice") in writing or via our online billing portal at <http://billing.shoppingtrader.com>. A Dispute Notice will give reasonable particulars of the nature of the Dispute.
- (b) Within three (3) Business Days of receipt of a Dispute Notice, the parties will hold discussions in good faith in an attempt to resolve the dispute ("Good Faith Negotiations").
- (c) If the dispute is not resolved by the Good Faith Negotiations within twenty (20) Business Days or the Good Faith Negotiations are not commenced within six (6) Business Days of receipt of the Dispute Notice then the dispute will pass to a designated Manager of the Customer and General Manager of the Company for resolution ("Medium Level Negotiations").
- (d) If within five (5) Business Days of the commencement of Medium Level Negotiations the dispute has not been resolved or if the Medium Level Negotiations have not commenced within three (3) Business Days of their scheduled start date, then the dispute will pass to the Managing Director (or Chief Executive Officer) of the Customer and the Managing Director of the Company's ultimate holding company for resolution ("High Level Negotiations"), within a further ten (10) Business Days.
- (e) At any time during the process as described in this clause either party can escalate the procedure to the higher level if the party reasonably considers that the nature of the issue is urgent, or circumstances relating to the discussions at the lower level make it appropriate that the issue be dealt with at the higher level.

15.2 Confidential

All information and documents disclosed by a representative under this clause 16 will be kept confidential and may not be used except to attempt to settle the dispute.

15.3 Nominees

For the purposes of this clause 16, a designated Manager or the Managing Director of a party may, if he or she considers it appropriate, appoint a nominee to participate in the dispute resolution in their stead.

15.4 Continuing Obligations

Both parties must continue to perform their obligations under this Agreement, notwithstanding any action taken pursuant to this clause.

15.5 Termination Clause Continues

Nothing in this clause will affect the parties' rights to terminate this Agreement herein contained.

15.6 Act Reasonably

The parties will act reasonably and in good faith in abiding by the provisions of this clause 16.

16 NATURE OF RELATIONSHIP

16.1 Independent Contractor

The Company renders the Services to the Customer as an independent contractor and nothing herein creates the relationship of partnership or joint venture between the parties.

16.2 Parties not to bind each other

The Company and the Customer will not:

- (a) bind or commit or purport to bind or commit the other party in any way; or
- (b) pledge the credit of the other party for any purpose.

Initials	

17 NOTICES

17.1 General

A notice, demand, certification, process or other communication relating to this Agreement is to be in writing.

17.2 Method of Service

In addition to any lawful means, a communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail; or
- (d) facsimile to the party's current number for service.

(e) Communication given by electronic mail (email) will not be an effective communication for purposes of this Agreement.

17.3 Particulars for Service

- (a) The particulars for service of each party are as set out in the Agreement Details.
- (b) Each party may change from time to time its particulars for service by written notice to the other party.

17.4 Service

If a communication is given by:

- (a) post it is taken as received three (3) Business Days (in the place of receipt) after posting; or
- (b) facsimile and the sender's facsimile machine produces a transmission report indicating that the facsimile was sent to the addressee's facsimile machine, the report will be prima facie evidence that the facsimile was received by the addressee in legible form at the time indicated on that report.

17.5 Service after hours

If a communication to a party is received by it:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is not a Business Day,

it is taken to have been received at the commencement of the next Business Day.

18 MISCELLANEOUS

18.1 Legal Costs

Each party will bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this Agreement.

18.2 Continuation of Obligations following Termination

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration or termination of this Agreement will remain in force and effect following the expiration or termination of this Agreement.

18.3 Waiver and Variations

- (a) A partial exercise or waiver of a right contained in this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) This document may only be varied, supplemented or replaced by a document in writing duly executed by the parties.

18.4 Approval and Consent

Subject to any express provision in this Agreement to the contrary, a party may conditionally or unconditionally give or withhold any consent contemplated by this Agreement and is not obliged to give its reasons for doing so.

18.5 Further Assurance

Each party will promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document and transactions contemplated by it.

18.6 Compliance with Laws

In the performance of the Services, the Company will comply, and will require the Company's Personnel performing any part of the Services to comply, with all applicable State and Territory Laws.

18.7 Governing Law

- (a) It is agreed by all parties that this Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland Australia, District of Brisbane.
- (b) Subject to compliance with the Dispute Resolution provisions of this Agreement, each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

18.8 Assignment

- (a) Except as expressly permitted by this Agreement, this Agreement may be assigned or sub-contracted by the Company without the prior written prior notice to the Customer.
- (b) The Customer may assign its rights and obligations pursuant to this Agreement to any Related Body Corporate of the Customer provided that the Customer undertakes to reimburse the Company for any additional costs incurred by the Company as a result of such assignment and the Company is satisfied (acting reasonably) that the new party is able to pay any applicable Service Fees.
- (c) Subject to paragraph (b) of this clause, the Customer will not assign any rights and obligations pursuant to this Agreement to any other party without the prior written consent of the Company (which will not be unreasonably withheld).
- (d) Notwithstanding any other provision of this Agreement, the Company may refuse its consent to assignment by the Customer of any rights and obligations under this Agreement to any person that is a competitor of the Company.

Entire Understanding

- (e) This document embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement.
- (f) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and are of no force or effect whatever and no party is liable to any other party in respect of those matters.

18.9 Severability

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain in full force apart from such provision, which will be deemed deleted.

18.10 Publicity

Subject to clauses 7 & 8, the Company must not make any reference to the Customer in any literature or promotional materials or in any other promotional activity without the prior written consent of the Customer.

18.11 Precedence

Each Work Order supersedes the remainder of this Agreement to the extent of any inconsistency in respect of the relevant Services.

18.12 Interpretation

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined, cognate words and phrases have corresponding definitions;

- (c) a reference to:
- (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and permitted assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy;
 - (v) discretion, authority or power
 - (vi) time is to local time in Brisbane;
 - (vii) "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (viii) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
 - (ix) a "month" is a reference to a calendar month.
- (d) a reference to this Agreement includes the agreement and undertakings of the parties contained in this Agreement and all schedules, annexures and appendices referred to in it; and
- (e) headings are inserted for convenience and do not affect the interpretation of this Agreement; and
- (f) where the date on or by which any act, matter or thing including, without limitation, the payment of money is to be done under this Agreement is not a Business Day then unless otherwise provided in this Agreement, such act, matter or thing may be done on the next succeeding Business Day.

19. SECURITY AND CHARGE.

19.1. Despite anything to the contrary contained herein or any other rights which The Company may have how so ever:

- a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to The Company or The Company nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that The Company (or The Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- b) should The Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify The Company from and against all The Company's costs and disbursements including legal costs on a solicitor and own Customer basis.
- c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint The Company or The Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 19.1.

20. PRIVACY ACT 1988

20.1. The Customer and/or the Guarantor/s agree for The Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by The Company.

20.2. The Customer and/or the Guarantor/s agree that The Company may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- a) to assess an application by the Customer; and/or
- b) to notify other credit providers of a default by the Customer; and/or
- c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- d) to assess the credit worthiness of Customer and/or Guarantor/s.

20.3. The Customer consents to The Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

20.4. The Customer agrees that personal credit information provided may be used and retained by The Company for the following purposes and for other purposes as shall be agreed between the Customer and The Company or required by law from time to time:

- a) provision of Services; and/or
- b) marketing of Services by The Company, its agents or distributors in relation to the Services; and/or
- c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services; and/or
- d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.

20.5. The Company may give information about the Customer to a credit reporting agency for the following purposes:

- a) to obtain a consumer credit report about the Customer; and/or
- b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

21. THE COMMONWEALTH TRADE PRACTICES ACT 1974 ("TPA") AND FAIR TRADING ACTS ("FTA")

21.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

21.2. Liability of The Company arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by The Company:

- a) the supplying of the Services again; or
- b) the payment of the cost of having the Services supplied again; or
- c) where the Customer is a consumer as defined in the Trade Practices Act 1974 then the Customer shall also be entitled to a refund.



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DICTIONARY

The Company means ShoppingTrader.com Australia Pty. Ltd. and or any of its subsidiaries - DotPapers.net DotMinded.net, plus any others as authorised by the Company, that may be added from time to time and its successors assigns or any person acting on behalf and with the authority of the Company.

RateCard for hosting services means the Company's latest charges for services located at <http://www.webexpress.net.au/ratecard>

Additional Services means such services additional to those services described in Annexure B as the parties may agree in writing are added to and subject to this Agreement (whether through amendment of this Agreement or the issue of a Work Order).

Agreement means this document together with each Work Order.

Agreement Details means the covering page to this Agreement.

Business Day is Monday to Friday, excluding gazetted public holidays in Queensland.

Campaign means each catalogue or press advertisement or other advertisement provided by the Customer to the Company under this Agreement or as processed by Company under this agreement as the context may require.

Contact Person means the person(s) named in a Work Order as a party's contact person for that Work Order or such other person nominated in writing by a party from time to time to replace the person named.

Confidential Information in respect of a party means information of every kind contained in or concerning:

- (a) the Services;
- (b) all Data in whatever medium;
- (c) prices or cost information relating to that party's business;
- (d) any Intellectual Property or industrial property owned or otherwise available for use by that party;
- (e) the business transactions, business methods, records, forms, costings, charges, financial affairs and trade secrets of that party;
- (f) all manuals, records, computer files and software, documents and materials generated or arising directly or indirectly out of any disclosure; and
- (g) the terms of this Agreement, **AND EXTENDS TO** all forms of storage or representation of the information referred to herein, including electronic storage and computer printouts, PROVIDED HOWEVER that Confidential Information will not include information which either party can establish conclusively:
- (h) entered the public domain without a breach of any obligation owed by the parties;
- (i) became known to one party prior to the other party's disclosure of such information;
- (j) became known to a party from a source other than the other party, except by way of a breach of any obligation of confidentiality owed to the other party; or
- (k) is independently developed by a party. **Customer** means the Customer named in the Agreement Details and includes their successors and permitted assigns.

Customer Help Desk Service means the Company help desk services in relation to the Service. The helpdesk will operate from 9am to 5pm AEST (Brisbane Time) on Business Days. Email and Web based help desk is no charge to the Customer, however the Company reverses the right to charge for telephone and personal onsite helpdesk support.

Expiry Date mean the last day of the Agreement.

Data means data and other information in whatever form provided by or on behalf of the Customer to the Company in order for the Company to

perform the Services and may include, but not be limited to, scripts, supplier details and product and other information.

Default Interest Rate means one per cent (2.5%) per month on the highest monthly balance.

Dictionary means this dictionary of definitions.

Dispute means a dispute or disagreement between the parties in relation to this Agreement and/or the subject matter of this Agreement.

Force Majeure means any act, omission or circumstance over which a party could not reasonably have exercised control including but not limited to strikes, industrial disturbances, government or regulator restrictions or intervention, water damage, floods, fire, lightning, storm, explosion, unavoidable incident, earthquakes, war, rebellion, civil strife, acts of God, or internet and communication link outages.

GST means a goods and services tax imposed under the GST Law.

GST Amount means the amount of GST payable in respect of a Taxable Supply calculated by applying the appropriate rate of GST in accordance with the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999.

Guarantor means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.

Insolvency Event means, with respect to either party, the happening of any of these events:

- (a) a Court order is made that a party be wound up; or
- (b) an order is made appointing a liquidator, provisional liquidator, a voluntary administrator, a receiver or receiver manager or other controller (as defined in the Corporations Act) or similar official is appointed over the assets or undertaking of a party, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or reorganise or amalgamate while solvent, any order adjudging a party to be insolvent, a petition seeking arrangement or composition in respect of a party, or assignment for the benefit of all or any class of creditors (except in the ordinary course of business); or
- (d) that a party resolves to wind itself up, or gives notice of intention to do so, except to reconstruct or reorganise or amalgamate while solvent, or is otherwise wound up or dissolved; or
- (e) that a party is or states in writing that it is unable to pay its debts as and when they fall due or ceases to carry on business or threatens to cease to carry on business.

Customer or Client have the same meaning and are interchangeable in this Agreement. Also it shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form / email as provided by The Company to the Customer.

Intellectual Property means all know-how, copyright, and all rights in relation to inventions, registered and unregistered trademarks (including service marks) registered designs, and circuit layouts, source code and object code used in any computer program, intangible concepts, knowledge, ideas, information and methodologies (including un-patented methods and technical and Confidential Information so long as they are not public knowledge) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Invoice Frequency means the frequency for the issuing of invoices as set out in the applicable Work Order (and if none is specified, the Invoice Frequency will be monthly).

Payment Period means the payment period for invoices set out in the applicable Work Order (and if none is specified, the Payment Period will be seven (7) days).

Personal Information means information or an opinion (including information or an opinion forming part of a database),

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whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.)

Privacy Laws means the *Privacy Act 1988* (Commonwealth) and the *National Privacy Principles* contained in that Act.

Related Body Corporate has the meaning given in the Corporations Act.

The Company means the company named as such in the Agreement Details and includes its successors and permitted assigns.

The Company's Personnel means the Company's employees, agents, subcontractors, consultants, licensees. Product licensees. franchisees, advisers or any other person engaged in the performance of the Services for or on behalf of the Company.

The Company's Officers means the Company's Directors, and or Company Secretary, and or Chief Executive Officer.

Service Fees means fees for the Services determined in accordance with Annexure A, as modified by any applicable Work Order.

Service Level Standards means the performance standards for the Services set out in Annexure B.

Services means the services, functions and responsibilities described in Annexure B and includes the Additional Services (if any). Further details of the Services will be specified in Work Orders agreed between the Company and the Customer.

Standard Pricing Table means the pricing described in Annexure A. Further details of pricing will be specified in Work Orders agreed between the Company and the Customer.

Welcome Pack means a document put together by the Company, and modified by the Company from time to time, outlining in detail what information is required to establish the service along with specifications and procedures for running the service such as file formats and file naming conventions.

Work Order means an order for Services agreed and executed by the parties in the Services Agreement.

ANNEXURE A

STANDARD PRICING TABLE

NOTE: Pricing published online at <http://www.webexpress.net.au/ratecard> is the latest offering.

1 About this Standard Pricing Table

- (a) This Standard Pricing Table together with the remainder of this document and any agreed Work Order, form the Customer's Agreement with the Company for the provision of the Services.
- (b) The Service Fees that the Customer may be charged are set out in this Standard Pricing Table, as modified by any applicable Work Order.

2 Minimum Commitment for webhosting and DNS services

The Customer must utilise the webhosting and / or DNS services service for the twelve (12) month period commencing from the date of delivery of the services. At the end of this 12 month term, if not cancelled under the terms of this Agreement, then the Agreement automatically renews for another 12 month period.

3 Set-up Fee

Customer may be charged a one off Set-up Fee in order to configure portions of the Service, including account set-up, technical integration into the Customer site as well as design, look and feel. This is quoted before the service is provided and accepted by the Customer.

4 Email Campaign Minimum Fee

The minimum charge per each email Campaign or other advertisement (**Campaign**) or as specified in the applicable Work Order.

5 Modification Fees

- (a) During the Campaign period, the web hosting may be modified at any time (24/7) by the Customers online (D.I.Y) product by default.
- (b) The Company may charge the following Modification Fee for this service.

Service	Modification Fee
Product or Category Offer or additional Training after the initial FREE training provided	\$0.00 if done by Customer (D.I.Y) OR; If done by the Company
\$60/hr + GST or part thereof	\$60/hr + GST or part thereof

6 Discounts

The Company may offer the Customer an introductory discount and/or an ongoing discount off the standard Product Offer Fee. Any discounted pricing will be specified in the applicable Work Order. See <http://www.shoppingtrader.com/ratecard> for any special offers or discounts.

Plan Name	Fee per period (or part thereof)	Once off Set-up Fee per Customer	Internet Traffic Allowance per Period (or part thereof)	Hard Disk Storage Space Allowance	Extra Hard Disk Space Per 10MB (or part thereof)
WebExpress Small paid Monthly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card
WebExpress Medium paid Monthly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card
WebExpress r Large paid Monthly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card
WebExpress Corporate paid Monthly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card
WebExpress Small paid Yearly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card
WebExpress Medium paid Yearly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card
WebExpress Large paid Yearly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card
WebExpress Corporate paid Yearly	As per online rate card	As per online rate card	As per online rate card	As per online rate card	As per online rate card

From time to time, the Company may offer special discounted pricing

- see <http://www.shoppingtrader.com/ratecard>

If special pricing is offered, then a duly initialled by both parties must be attached to the Contract to over ride this above pricing. The renewal pricing is our standard pricing (non special offers) as online at <http://www.shoppingtrader.com/ratecard> unless prior agreed by consent of the Company.



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7 Additional Fees

Additional Services may be agreed by the parties from time to time and additional Service Fees will apply as agreed between Customer and the Company.

8 GST

All Fees are exclusive of GST.

9 Cancellation Fee

If the Customer cancels the web hosting service before the end of the minimum commitment period specified in paragraph 2 above, the Company will charge the Customer a cancellation fee. This fee will be equal to any Set-up Fee for web hosting service, unless this charge has already been paid. Where the Company initially waives the Set-up Fee but the Customer then cancels the Agreement or the web hosting service prior to the expiry of the minimum commitment period for the web hosting service, the Customer must pay a cancellation fee equal to the Set-up Fee specified in paragraph 3 above. Any fees due up to the end of minimum commitment period are immediately due upon notice of cancellation.

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ANNEXURE B SERVICES DESCRIPTION

1 About this Services Description

- (a) This is the Services Description for the Services offered to the Customer by the Company.
- (b) Where the Customer may be charged fees for the Service, the standard fees are set out in the Standard Pricing Table.
- (c) The Service Fees in the Standard Pricing Table will apply unless different Service Fees are specified in the relevant Work Order.

2 The Service

- (a) The Service may use, at additional cost to the customer, promotional strategy designed to extend the reach, readership and effectiveness of the Customer's website and other advertisements through Dotminded's Dotpaper. For costing of this service see <http://ratecard.dotminded.net>
- (b) The Service may use, at additional cost to the customer, promotional strategy designed to extend the reach, readership and effectiveness of the Customer's website and other advertisements through Search Engine promotion.
- (c) The Service is a promotional strategy designed to extend the reach, readership and effectiveness of the Customer's website and other advertisements through digital media (initially online).
- (d) The Services currently comprise the Company web portal(s) and Web hosting / DNS services.
- (e) Additional Services, including but not limited to service, mobile and digital TV services, may be made available from time to time. Details, including fees, will be provided by the Company promptly upon release of such Additional Services.

1.1 The Company's web portals

- i. The Company's web portals are an aggregated retail promotions web portal featuring multiple vendor products and services, able to be found on a localised basis.
- ii. The Company provides end users with the opportunity to research product offers and promotions Dotpapers (Flipping Pages) online (at www.JustCatalogues.com www.JustMotoringOnline.com www.JustRealEstateOnline.com etc.) before proceeding to purchase items in-store or on a customer's website. The Company portal is feature rich. Product offers and promotions are fully searchable and browsable and are in-sync with the Customer's printed promotions.
- iii. The Company web portals are purely a research tool, and does not provide online purchase functionality.
- iv. The Company will only host products and services from vendors regardless it they have a physical retail stores or not.

1.2 Dynamic DotPaper

- i. Dynamic DotPaper is a fully hosted and managed catalogue service linked via the Customer's website to the Company's servers, delivering back online Dotpaper specific to the Customer, in the Customer's look and feel.
- ii. Dotpapers are Customer branded so that it appears that the Dotpaper is made available on the Customer's own website.
- iii. Dotpapers are feature rich, fully searchable and browsable and are made available in-sync with the Customer's printed promotions. DotPapers do not provide online purchase functionality except by link to the Customer's online store if desired.
- iv. Information provided by end users accessing the Dynamic DotPaper service will be stored by the Company for the term of this Agreement and made available to the Customer on reasonable request, including on termination of this Agreement.

2 Information required to establishment of the Service

The Company will outline in a 'Welcome Pack' the details required for setting up the Service and details covering ongoing workflow.

3 Timeframes

i. The Customer must comply with the following timeframes to allow the Company to deliver the Services.

	Press Advertisement (Banner Advertisements)	Catalogue
Initial submission by Customer	1 Business Day prior to publication	N/A if done by Customer If done by the Company, 10 Business Days prior to publication
Final approval	2 hours after Product Offer is made available online for final approval	N/A if done by Customer If done by the Company, 48 hours after the Dotpaper is made available online for final approval
Modification/Removal	24 hours notice	N/A if done by Customer If done by the Company, 24 hours notice

ii. The Company must use its reasonable endeavours to comply with the following timeframes, as part of providing the Services.

	Press ads (banner Advertisements)	Catalogue
Campaign processing	1 Business Day	N/A if done by Customer If done by the Company, 1 day
Publishing	2 hours	N/A if done by Customer If done by the Company, 1 day

4 Reports

The Company will provide a standard set of reports for online traffic that accesses the web statistics via the Company's online customer portal. Details of reports (including timing and any custom reports) are available 24/7 online and to be accessed by the Customer.

5 Customer Service

The Company will provide a helpdesk service for Customer queries in relation to the Service. The helpdesk will operate from 9am to 5pm AEST (Brisbane Time) on Business Days.

Submit all helpdesk service for Customer query via email to Service@ShoppingTrader.com

6 Service Level Standards

- i. The Company will use all reasonable commercial efforts to ensure that the Services are available on a continuous basis, other than for reasonable, scheduled periods of unavailability for maintenance or upgrades (**Planned Outage**). The Company will use its best endeavours to provide the Customer with reasonable notice of any planned maintenance requirements and to schedule such maintenance in consultation with the Customer.
- ii. The Company must use reasonable endeavours, subject to the exceptions below, to ensure that end users may access the website hosting Service 99% of the time, 100% uptime is available at additional costs using Cloud and Distributed networking – see contact sales@shoppingtrader.com for more information.
- iii. The Company must use reasonable endeavours to respond to any notification that the Services are unavailable within 4 hours.
- iv. The Company will not be responsible for any failure to achieve these Service Level Standards to the extent the failure is caused, directly or indirectly by, or arises from or in connection with:
 - a) a Force Majeure Event;
 - b) a Planned Outage;
 - c) any act or omission of the Customer or the Customer's personnel; or
 - d) the exercise of the Company's right to suspend the Services in accordance with this Agreement.
- v. For the avoidance of doubt, these Service Level Standards do not apply to any other services, unless expressly provided otherwise.